

AF/IFW



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Patent Office Board of Appeals

APPLICANT: R.E. Williams  
SERIAL NO: 10/688,179  
FILED: October 16, 2003  
FOR: SEPARABLE TAG FOR BAGS  
OR OTHER CONTAINERS

GAU: 3611  
EXAMINER: J. Silbermann  
St. Louis, Missouri  
Date: July 11, 2006  
DN: 7348

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

Attorney

Date of Signature

Director, Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

---

BRIEF FOR APPLICANT

RESUBMITTED AGAIN

---

Paul M. Denk  
Attorney for Applicant  
Pat. Office Reg. No. 22,598  
763 South New Ballas Road, Ste. 170  
St. Louis, Missouri 63141  
(314) 872-8136

## Table of Contents

	<u>Page</u>
Citations of Cases and Statutes .....	iii
I. Real Parties in Interest .....	1
II. Related Appeals and Interferences .....	2
III. Status of Claims .....	3
IV. Status of Amendments .....	4
V. Claimed Subject Matter .....	5-6
VI. Grounds of Rejection.....	7
VII. Argument .....	8-10
XIII. Conclusion .....	11
Appendix .....	12-13
Evidence Appendix.....	14
Related Appeals and Interferences Appendix .....	15

**Citation of Cases and Statutes**

	<u>Page</u>
Cases:	
<i>In re Geiger</i> , 815 F2d. 686 (Fed. Cir. 1987) .....	8
Statutes:	
35 U.S.C. §103(a).....	7,8,10



### I. Real Parties in Interest

The parties and interest in this particular application include the inventor, Robert E. Williams, and the Company to which he has assigned this application, Sev-Rend Corporation, of St. Louis, Missouri.

## **II. Related Appeals and Interferences**

There are no related appeals or interference proceedings pertaining to the subject matter of this patent application.

### **III. Status of Claims**

Applicant filed its Amendment A in the United States Patent Office, and the examiner issued a final rejection dated August 25, 2005. In the final rejection, the examiner rejected claims 1-4 and 9-14, of this application. It is from this final rejection that Applicant has filed its Notice of Appeal and the Brief herein.

Thus, the claims under appeal are 1-4, and 9-14.

#### **IV. Status of Amendments**

There have been no subsequent amendments filed after the final rejection that issued from the examiner.

## **V. Claimed Subject Matter**

This invention relates to what is identified as Separable Tags for Bags and or Other Containers. Thus, in referring to the drawings, FIG. 1 shows a separable tag 1(p.6) for use upon bags or other containers. The tag includes a body portion 2(p.6), with a narrowed integral neck portion 3(p.6), such that the neck portion, because it is of a narrowed dimension, may be stapled, crimped, wire tied, or clipped to the upper end of a bag, such as the bag B (p.6) once vegetables or other produce have been enclosed therein, for marketing. See, for example, FIG. 5.

The independent claims of this application are claims 1 and 14.

The elements of claim 1 have been previously described, but to reiterate, the separable tags 1 are formed of the upper and bottom layers, such as the top layer 5, and the bottom layer 4, as shown, with the tag bottom portion also having an integral neck portion 3. A series of the tags are linked together, as can be seen in FIG. 3, but which can be separated from each other for individual usage at the top of each integral neck, as noted at 8. Hence, the integral neck of each tag is capable of being connected to a bag or other container during usage, with the integral neck, as can clearly be seen, of each tag being substantially narrower than the tag bottom portion, and extending upwardly from said bottom portion approximately centrally thereof. Then, the upper layer 5 of each tag is separable from its bottom portion 4, as noted in FIG. 2, and also separates from the neck of the tag, with the upper layer generally being adhered to the bottom layer by an adhesive so that the upper layer can be separable from the bottom portion during usage. This is what is defined in claim 1, and has been previously summarized herein.

Claim 14, contains the identical elements that have been just previously described, with the exception that the claim states that the integral neck 3 of each tag is capable of being connected to a bag, such as shown at B, in FIG. 5. Furthermore, the integral neck is substantially narrower than the bottom of the tag, and is generally arranged centrally thereof. Otherwise, the remaining portion

of the tag is almost similar to what is described in claim 1, and as explained in the subject matter. But then, the claim defines that the upper layer of the tag may be made of one of paper, polymer film, such as polypropylene, polyethylene, polystyrene, PVC, and the like, as set forth on page 6 of the specification. In addition, the bottom layer of the tag can also be formed from one of paper, plastic, polymer film, polypropylene, polyethylene, polystyrene, and polyvinyl chloride film, or other synthetic printable material, generally as also set forth on page 6 of the specification. Then, the claim defines that there are a series of such tags that are connected together, generally in a manner as shown and described in FIG. 3, and that said series of tags can be formed into a roll, as explained also on page 7 of the specification. And, the upper of the base, and the bottom portion of the tag is capable of being printed, to provide for the printing of indicia upon these exposed surfaces of said layers of the formed tag. This concept is described on the upper portion of page 7 of the specification.

## **VI. Grounds of Rejection**

The examiner, in the final rejection, rejected claims 1-4, 9, 10 and 14, under 35 U.S.C. §103(a), as being unpatentable over Whipp, patent No. 5,792,536.

The examiner further rejected claims 11 and 12, under §103(a), as being unpatentable over Whipp, and further in view of Kinne, patent No. 3,863,369.

Finally, the examiner rejected claim 13 under §103(a), as being unpatentable over Whipp, and further in view of Heuser, U.S. patent No. 2,953,865.

## **VII. Argument**

### **Claims 1-4, 9, 10 and 14:**

The examiner has initially rejected claims 1-4, 9, 10 and 14, upon 35 U.S.C. § 103 (a) as being unpatentable over Whipp, U.S. patent No. 5,791,536.

Applicant has looked over the patent to Whipp, but frankly, just does not see any type of a separable tag, that is formed of multi layers, to the configuration as described by Applicant in claim 1, where each of the tags are comprised of a series of tags, linked together, but capable of separation, and are formed having an integral neck, that is narrower than the tag bottom portion, and which extends upwardly from the bottom portion approximately centrally thereof. Whipp may show a multiple-layer label, actually formed from what would appear to be six layers of material, having first second and third layers, one being formed of a base material, a second layer applied thereto, and a third layer that is releasably attached to the second layer. This is really not Applicant's invention, nor does it even suggest the same. No doubt the Whipp label is designed for marketing promotions, can even be used as an award coupon, or game piece, but other than that fact, it appears to be of an entirely different type of laminate structure, and furthermore, has a configuration that in no way has the appearance of FIGS. 1, 5, or the like, of the current invention, and as described in claim 1, nor can it be used in the manner of the current invention, to be fed off of a roll, as continuously connected tags, wherein portions may be separated, because of strategically located perforations, in the manner as claimed for this current invention.

For prior art to be effective for supporting a rejection based upon obviousness, see the case of *In re Geiger*, 815 F2d. 686 (Fed. Cir. 1987), where the court stated that obviousness cannot be established by combining teachings of prior art to produce the claimed invention, absence of some teaching, suggestion, or incentive supporting that combination.

The examiner attempts to state that Whipp shows a neck of a tag, and somehow the examiner believes that there is a neck shown in its FIG. 4, but Applicant just does not see the same. Hence, it is believed that Whipp, while showing some type of a multi layered label, other than that, just does not provide enough teachings to anyone skilled in the art to make Applicant's claimed invention, as set forth in claim 1, or dependant claims 2-4, nor claim 9. Furthermore, even if you get by the structure of what is described in claim 1, claim 10 describes the specific location where printable information is applied, such as to the bottom layer of the base of the tag. This is set forth in claim 10 of the current application. Whipp's base is defined as a shrinkable base material, does not appear to contain any print material, nor can it accept the same. Thus, Whipp just does not provide anything that makes claim 10 so obvious to one skilled in the art. Finally, in claim 14, the same defining structure for the separable tags for bags is set forth for this current invention, and describes that the upper layer of the tag may be formed of one of paper, polymer film, etc, while the bottom of the tag may be formed on paper, plastic, or the like. Whipp simply states that its bottom layer is formed of a release liner, does not appear to state that printable material such as indicia may be applied thereto, and it does not appear that Whipp identifies his bottom layer as being used for that purpose, but rather it simply functions as a liner for holding a release material. Hence, it is believed patentable subject matter is set forth in these identified claims.

Claims 11 and 12:

The examiner further rejected claims 11 and 12, over the prior patent to Whipp, and further in view of Kinne, U.S. patent No. 3,863,369, as being obvious under § 103(a).

Whipp has already been reviewed, and frankly just as not show the structure for a series of tags, for bags, that are configured of a particular style, so that its upper narrowed neck may be tied or stapled to the twisted end of a bag for food products. Kinne just simply shows a peelable label, having no structure whatsoever related to what is set forth these two claims, but simply shows how individual labels may be made, as in the instance of Kinne, for furnishing a page like label that may be peeled back, to its hinge line 16, for exposing an inner page 11. This really is not what Applicant is doing, nor claiming, and even if Kinne should some how be applied to Whipp, the overall configuration for the Applicant's tag would still not be suggested, in any manner, by this combination of prior art.

Claim 13:

Claim 13 defines how the separable tags of this current invention are separated at their upper neck portions, by a line of perforation. The examiner further cited the Whipp patent in view of Heuser as making the invention obvious to one skilled in the art. Heuser just does not show any type of a neck portion for a label, and nor does Whipp, as previously reviewed. Hence, since there are no neck portions shown in either of these two prior art, it is just not seeing how Heuser can be used to modify Whipp, to come up with answering structure to what is set forth in this defendant claim 14.

### **VIII. Conclusion**

It is submitted that patentable subject matter is set forth in the remaining claims of this application. It is believed that the claimed subject matter is just not rendered so obvious to one of ordinary skilled in the art, nor, is it even suggested by any combination of the prior art as attempted by the examiner. It is just not seen how the prior art could even be modified, to provide for any realistic structure of the type as defined in the claims of this patent application, other than showing, in said art, that laminar labels may be formed. But, Applicant's invention is not just that.

In view of the foregoing, it is submitted that patentable subject matter is set forth in these remaining claims 1-4, and 9-14, and deserve patentable protection.

The Board's review of this matter would be appreciated.

Enclosed is the appeal brief fee, and if any additional charges are due, please debit our deposit account No. 040731.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "PMD/tb".

Paul M. Denk  
Attorney for Applicant  
Pat. Off. Reg. No. 22,598  
763 South New Ballas Road  
St. Louis, MO 63141  
(314)872-8136

PMD/tb

Enclosure

## APPENDIX

1. Separable tags for bags or other containers comprising at least one tag, said tags having upper and bottom layers, said tag layers having a bottom portion, said tag bottom portion also having an integral neck extending upwardly therefrom, a series of tags being linked together but capable of being separated for individual usage at the top of each integral neck, the integral neck of each tag capable of being connected to a bag or other container during usage, the integral neck of each tag being substantially narrower than the tag bottom portion and extending upwardly from the said bottom portion approximately centrally thereof, the upper layer of said tag overlying both said bottom portion and its integral neck, the upper layer of each tag being separable between its bottom portion and its neck, the upper layer being adhered to the bottom layer by an adhesive whereby the upper layer of the bottom portion being separable from said bottom portion during usage.
2. The separable tag of claim 1 wherein the upper layer formed of one of paper, plastic, and other synthetic printable material.
3. The separable tag of claim 2 wherein the bottom layer is formed of one of paper, plastic, or other synthetic printable material.
4. The separable tag of claim 3 wherein said adhesive comprises a release coat, and said adhesive being one of ultraviolet silicone, release type adhesive, release coat, and a polymer adhesive.
9. The separable tag of claim 1 wherein the separable top layer of the bottom portion of the tag capable of being imprinted with coupon information, manufacturer rebate information, cross branding, recipe information, and promotional advertising.
10. The separable tag of claim 9 wherein the bottom layer of the base of the tag may be imprinted with pricing information, sale-by date, lot code, recipes, handling information, cooking instructions, UPC code, and product and customer branding indicia.

11. The separable tag of claim 14 wherein the line of separation between the upper layer of the tags and its integral neck being a line cut.

12. The separable tag of claim 11 wherein the top layer of the base of the tag can be peeled from the bottom layer of said base.

13. The separable tag of claim 14 wherein said series of tags are separable at their upper neck portions by a line of perforation.

14. A separable tag for bags or other containers comprising at least one tag, said tag having upper and bottom layers, said tag layers having a bottom portion, said tag bottom portion also having an integral neck extending upwardly therefrom, a series of said tags being linked together but capable of being separated for individual usage at the top of each integral neck, the integral neck of each tag capable of being connected to a bag or other container during usage, the integral neck being substantially narrower than the tag bottom portion, and extending upwardly from the said bottom portion approximately centrally therefrom, the upper layer of said tag overlying both the bottom portion and its integral neck, the upper layer of each tag being separable between its bottom portion and its neck, the upper layer being adhere to the bottom portion by an adhesive whereby the upper layer portion being separable from said bottom portion during usage, the upper layer of said tag being made of one of paper, polymer film, polypropylene, polyethylene, polystyrene, and polyvinylchloride film, the bottom layer of said tag being formed from one of paper, plastic, polymer film, polypropylene, polyethylene, polystyrene, and polyvinylchloride film and other synthetic printable material, wherein there are a series of said tags being connected together continuously for forming a roll of said tags, and the upper of the base, and the bottom portion of the tag being printable to provide for the printing of indicia upon the exposed surfaces of said layers of the formed tag.

### **EVIDENCE APPENDIX**

There is no evidence that has been identified nor needs to be appended in this application.

### **RELATED APPEALS AND INTERFERANCES APPENDIX**

There no related appeals or interference materials that need to be considered, supplied, nor applied in this case.